

**REMARKS**

Applicants thank the Examiner for the thorough consideration given the present application. Claim 6 was previously cancelled without prejudice to or disclaimer of the subject matter set forth therein. Claims 1-5 and 7-21 are pending. Non-narrowing amendments are made to each of claims 15 and 20. Claims 1, 13 and 15 are independent. The Examiner is respectfully requested to reconsider the rejections in view of the remarks set forth herein.

**Request for Reconsideration / Reasons for Entry of Reply**

At the outset, Applicants respectfully submit that the Examiner rejections of at least claims 1, 9, 13, 15, 16, 17, and 18 as previously presented in the Amendment filed on March 30, 2007 is NOT proper and should be withdrawn. (See arguments on the following pages.)

By way of this Reply, Applicants have merely amended claims 15 and 20 to correct inconsistencies and typographical errors in these claims. Inasmuch as the pending claims contain only subject matter that has been previously considered and fully examined by the Examiner, nothing in the pending claims raises new issues that would warrant or require an additional search of the related art by the Examiner. Therefore, it is respectfully requested that this Reply be entered into the Official File in view of the fact that the pending claims automatically place the application in condition for allowance.

In the alternative, if the Examiner does not agree that this application is in condition for allowance, it is respectfully requested that this Reply be entered for the purpose of appeal.

**Interview with Examiner**

In order to accelerate the prosecution of the present invention, Applicants request that the Examiner grant an interview with the Applicants' Representative Carl T. Thomsen, Registration No. 50,786 during the examination of this Reply. Carl T. Thomsen may be reached at direct line 703-208-4030 at a time of the Examiner's convenience.

**Rejection Under 35 U.S.C. §102(b) and §103(a)**

Claims 13-15 stand rejected under 35 U.S.C. § 102 (b) as being anticipated by Ennis, U.S. Patent No. 4,354,291. Claims 1-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ennis in view of Korfgen et al., U.S. Patent No. 4,614,449. These rejections are respectfully traversed.

**Arguments Regarding Independent Claim 13**

Independent claim 13 as previously presented recites a combination of elements directed to a livestock brushing device, including *inter alia*  
the carrying means including a rigid frame and at least one flexible element, said at least one flexible element being fixed at one end directly to a rigid, non-movable structure and being connected at an opposite end to a rigid frame.

For support the Examiner is directed to FIG. 1 which illustrates one end of flexible elements 10a, 10b fixed directly to a rigid, non-movable structure 16, and having an opposite end connected to a rigid frame 8.

In the rejection of claim 13 under 35 U.S.C. § 102(b) based on Ennis, the Examiner asserts that Ennis FIGS. 11 and 12, teach at least one flexible element (102) fixed at one end directly to a rigid, non-movable structure (50) and being connected at an opposite end to a rigid frame (52). Applicants respectfully disagree with the Examiner's assertion.

As is clear from Ennis FIGS. 11 and 12, and column 5, lines 61-62, this document explicitly discloses brush shaft 50 coupled to motor shaft 52. Absent any evidence by the Examiner to the contrary, Applicants respectfully submit that brush shaft 50 and motor shaft 52 of Ennis certainly do NOT teach or suggest

"at least one flexible element 10a, 10b being fixed at one end directly to a rigid, non-movable structure 16 and being connected at an opposite end to a rigid frame 8", as required by claim 13 of the present invention.

Ennis's rotary shafts 50, 52 cannot teach or suggest either "a rigid, non-movable structure" or "a rigid frame"

At least for the reasons above, Applicants respectfully submit that the combination of elements set forth in independent claim 13 of the present invention, are not taught or suggested by the references cited by the Examiner, including Ennis.

Therefore, independent claim 13 is in condition for allowance.

**Arguments Regarding Independent Claim 15**

Independent claim 15 has been amended merely to correct a typographical error in claim 15, lines 12-13 of the Amendment filed on March 30, 2007 as follows:

“wherein one end of the driving means faces the livestock brush and an opposite end of the driving means is exposed (see also claim 19 as previously presented).

Support for the novel features of claim 15 of the present invention can be seen in FIG. 1, in which one end of the driving means 6 faces the livestock brush 2 and an opposite end of the driving means 6 is exposed.

On page 3 of the Office Action, the Examiner asserts that “merely stating that the end is exposed ... does not define what the end is exposed to and can be exposed to many things such as a housing, air, a rigid member, etc.”

Webster’s Unabridged (1996) English dictionary provides only three definitions of “exposed” as follows: 1. “left or being without shelter or protection”; 2. “laid open to view; unconcealed”; and 3. susceptible to attack; vulnerable”. Therefore, it is improper for the Examiner to contest the meaning of the word “exposed” as claimed.

In contrast to the present invention, Ennis FIGS. 10 and 13 merely disclose a vehicle washing apparatus with the one lower end of the motor facing the brush 48, and an opposite end concealed by, and fixed to the lower side of spring coupling 100. Further, Ennis FIG. 12 merely discloses a vehicle washing apparatus with one end (the right end) of the motor

facing a shaft leading to the coupling device 54, and an opposite end (the left end) being exposed.

At least for the reasons above, Applicants respectfully submit that the combination of elements set forth in independent claim 15 of the present invention, are not taught or suggested by the references cited by the Examiner, including Ennis.

Therefore, independent claim 15 is in condition for allowance.

**Arguments Regarding Independent Claim 1**

Independent claim 1 as previously presented recites a combination of elements directed to a livestock brushing device, including *inter alia*

“the oblong livestock brush having a shaft and brush hairs projecting substantially radially therefrom when the oblong livestock brush is not being driven by the driving means; and ... the livestock brush for brushing external sides of an animal.”

**Ennis is Non-Analogous**

The Examiner concedes that Ennis fails to disclose or make obvious “brush hairs projecting substantially radially therefrom when the oblong livestock brush is not being driven by the driving means”. This alone should be sufficient to indicate that Ennis is non-analogous to the art of livestock brushing, and should be withdrawn.

An indicator that Ennis is non-analogous can be found, for example, in Ennis column 5, lines 66-67 which discloses “the brush 48 preferably is of a type having soft bristles which

collapse when the brush is not rotating, but which expand outwardly during rotation". It would be obvious to one skilled in the art of vehicle washing, that a brush for vehicle washing must have soft and flexible bristles so as not to damage the finish of the vehicle during washing. Moreover, the vehicle washing device of Ennis include swiveling arms 46 that allow the rotating brushes 12, 48 to move around the front sides and rear of the car.

In addition, as explicitly disclosed in Ennis, the bristles of brushes 12, 48 are flexible so that, in addition to the swiveling of arms 46, the bristles flex and bend around the contours of the vehicle when the vehicle is being washed. (For example, see FIGS. 8 and 9, where the bristles on the central part of the brush that impinge on sides and rear of the vehicle must bend. In other words, these bristles no longer can project substantially radially therefrom when the oblong livestock brush is not being driven by the driving means.)

However, one skilled in the art of livestock brushing would not find it obvious to look at a vehicle washing device when seeking a solution for the requirements of animal brushing. Unlike vehicle cleaning, which requires soft and flexible bristles, animal brushing requires bristles that are stiff so that the animal body can be scratched during the brushing process. The present invention is directed to livestock brushing, not livestock washing.

Regarding "**Analogous and Non-Analogous Art**", the Manual of Patent Examining Procedure (MPEP) 2141.01 sets forth the following guidance for Examiners:

#### **ANALOGY IN THE MECHANICAL ARTS**

See, for example, *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992) (Applicant claimed an improvement in a hose clamp which differed

from the prior art in the presence of a preassembly “hook” which maintained the preassembly condition of the clamp and disengaged automatically when the clamp was tightened. The Board relied upon a reference which disclosed a hook and eye fastener for use in garments, reasoning that all hooking problems are analogous. The court held the reference was not within the field of applicant’s endeavor, and was not reasonably pertinent to the particular problem with which the inventor was concerned because it had not been shown that a person of ordinary skill, seeking to solve a problem of fastening a hose clamp, would reasonably be expected or motivated to look to fasteners for garments. The Commissioner further argued in the brief on appeal that a disengageable catch is a common everyday mechanical concept, however the court held that the Commissioner did not explain why a “catch” of unstated structure is such a concept, and why it would have made the claimed invention obvious.).

Regarding “**Level of Ordinary Skill in the Art**”, the MPEP 2141.03 includes the following guidance for Examiners:

**FACTORS TO CONSIDER IN DETERMINING LEVEL OF ORDINARY SKILL**

“Factors that may be considered in determining level of ordinary skill in the art include (1) the educational level of the inventor; (2) type of problems encountered in the art; (3) prior art solutions to those problems; (4) rapidity with which innovations are made; (5) sophistication of the technology; and (6) educational level of active workers in the field.” *Environmental Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 696, 218 USPQ 865, 868 (Fed. Cir. 1983), cert. denied, 464 U.S. 1043 (1984).

In view of the above, Applicants respectfully submit that the Examiner should reconsider and withdraw the Ennis document in his rejection of claim 1 of the present invention as being non-analogous.

**Korfgen is Non-Analogous**

The Examiner then points out that Korfen et al. teach “brush hairs projecting substantially radially therefrom”. As can be seen, the Korfgen et al. reference merely teaches a brush to be manually used to clean internal portions of a bottle.

Applicants respectfully submit that it is not proper to reject independent claim 1 of the present invention based on the combination of Ennis and Korfgen et al. for at least the reasons set forth below:

The Examiner has failed to demonstrate that any of Ennis, Korfgen et al., and the livestock brushing device of present invention are analogous, with respect to each other.

In addition, the Examiner has failed to show that one having ordinary skill in the art of livestock care, would find it obvious to combine teachings of a vehicle washing apparatus (Ennis) with that of a cleaning brush for cleaning insides of a bottle (Korfgen et al.) to arrive at the livestock brushing device for brushing external sides of livestock, as set forth in independent claim 1 of the present invention.

Applicants respectfully submit that the art of the vehicle washing apparatus (Ennis) and that of a cleaning brush for cleaning insides of a bottle (Korfgen et al.) are non-analogous to each other. Moreover, both of Ennis and Korfgen et al. are non-analogous to the livestock brushing device of the present invention. The present invention is directed to

livestock brushing, wherein each of Ennis and Korgen et al. is directed to a washing/cleaning device.

Regarding “**The Requirement to Establish a Prima Facie Case of Obviousness**”, the MPEP 2143 includes the following guidance for Examiners:

The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. “To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.” *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). See MPEP § 2144 - § 2144.09 for examples of reasoning supporting obviousness rejections.

### **THE PRIOR ART MUST SUGGEST THE DESIRABILITY OF THE CLAIMED INVENTION**

“There are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art.” *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998) (The combination of the references taught every element of the claimed invention, however without a motivation to combine, a rejection based on a *prima facie* case of obvious was held improper.). The level of skill in the art cannot be relied upon to provide the suggestion to combine references. *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999).

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so >. *In re Kahn*, 441 F.3d 977, 986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006) (discussing rationale underlying the motivation-suggestion-teaching requirement as a guard against using hindsight in an obviousness analysis). The teaching, suggestion, or motivation must be found either explicitly or implicitly in the references themselves or in the

knowledge generally available to one of ordinary skill in the art. “The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art.” *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000).

Examiner has failed to show that one having ordinary skill in the art of livestock brushing, would find a suggestion or, find it desirable, or be motivated to combine teachings of a vehicle washing apparatus (Ennis) with that of a cleaning brush for cleaning insides of a bottle (Korfgren et al.) to arrive at the livestock brushing device for brushing external sides of livestock, as set forth in independent claim 1 of the present invention.

At least for the reasons above, the Examiner has failed to establish a *prima facie* case of obviousness to combine Ennis and Korfgren et al. Therefore, Applicants respectfully submit that it is not proper for the Examiner to combine Ennis and Korfgren et al. to reject the invention of claim 1. Reconsideration and withdrawal of the Examiner’s rejection under 35 U.S.C. § 103(a) are therefore respectfully requested.

Therefore, independent claim 1 is in condition for allowance.

Reconsideration and withdrawal of the Examiner’s rejection under 35 U.S.C. § 103(a) are therefore respectfully requested.

**Dependent Claims**

The Examiner will note that dependent claim 20 is amended to correct an informality and to now recite “wherein the carrying means includes a rigid frame”. The Examiner will

note that relation of the carrying means to the rigid frame in amended claim 20 is now consistent with that previously presented in claim 13.

Applicants submit that these claims are allowable due to their dependence on independent claims, as well as due to the additional recitations in these claims.

For example, dependent claim 9, discloses

“drip-feeding means for drip-feeding a treatment agent from a place situated above the brush onto the livestock brush”.

On page 6 of the Office Action, the Examiner asserts that Korgen et al. column 1, lines 56-65 includes a means for drip-feeding. Applicants respectfully disagree. As can be seen in Korfgen et al. column 2, line 60 to column 3, line 2 discloses a frustoconical rim portion 33 and water is discharged (under high pressure) through the slots 32 in order to impinge at an acute angle on bristles 31, in order to obtain an optimum cleaning effect of the bristles.

By contrast, the present invention teaches a means for drip-feeding a treatment agent. The high pressure water discharged by Korgen et al. in order to optimize a cleaning effect of the bristles, certainly does not teach or make obvious “drip-feeding means for drip-feeding a treatment agent from a place situated above the brush onto the livestock brush”, as is required by claim 9. Therefore, claim 9 as previously presented contains allowable subject matter.

For another example, dependent claim 16, discloses

“the brush hairs project substantially radially from the livestock brush such that a diameter of the livestock brush is substantially equal to one-half meter (.5m) regardless of the orientation of the livestock brush”.

On page 6 of the Office Action, the Examiner asserts that the bristles of Korgen et al.’s bottle cleaning brush make obvious the one-half meter (.5m) long bristles of the brushing device of the present invention. While Korfgen et al. fails to disclose the length of the bristles of the Korfgen et al. device, presumably the diameter of the brush is sufficiently small so that the brush can be inserted through a neck of a bottle. The Applicants submit that it is NOT proper for the Examiner to conclude that the livestock brush having a diameter of 2 times one-half meter = 1 meter is a mere obvious matter of design. The problem facing the inventor of a bottle cleaning brush was to make the brush sufficiently small to fit inside a bottle. The problem facing the present inventors was to make a brushing device with bristles long enough (substantially equal to one-half meter (.5m)) to brush outer sides of an animal.

One is not a simple matter of design choice of the other. Therefore, claim 16 contains allowable subject matter.

For still another example, dependent claim 17, discloses “an end of the driving means facing the livestock brush is rigidly connected to the rigid frame”. See arguments regarding the patentability of claim 13 above. Therefore, claim 17 contains allowable subject matter.

For still another example, dependent claim 18, discloses

“wherein the at least one flexible element extends along at least one side of the driving means”. See FIGS. 1 and 2 for support.

As can be seen in Ennis FIGS. 2, 3, 4, 9, 10, 11, 12, and 13, nowhere in Ennis is “the at least one flexible element extends along at least one side of the driving means”, as required by claim 18. Ennis merely teaches a motor mounted above or below element 102, and not along at least one side of the motor 56.

Therefore, claim 18 contains allowable subject matter.

In view of the above amendments and remarks, Applicants respectfully submit that claims 1-5 and 7-21 clearly define the present invention over the references relied on by the Examiner. Reconsideration and withdrawal of the Examiner’s rejections under 35 U.S.C. § 102(b) and 103(a) are therefore respectfully requested.

**CONCLUSION**

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. It is believed that a full and complete response has been made to the outstanding Office Action, and that the present application is in condition for allowance.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, he is invited to telephone Carl T. Thomsen (Reg. No. 50,786) at (703) 208-4030 (direct line).

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17, particularly extension of time fees.

Respectfully submitted,

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